

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: Complaint and Petition for Relief)	
Of South Carolina Net, Inc. d/b/a Spirit)	
Communications v. BellSouth)	Docket No. 2016-79-C
Telecommunications, LLC d/b/a AT&T)	
South Carolina)	

PROPOSED PROTECTIVE ORDER

This matter comes before the Public Service Commission of South Carolina (“Commission”) upon the Motion of South Carolina Net, Inc. d/b/a Spirit Communications (“Spirit”) for a Protective Order. The Commission has determined that the Motion should be granted and hereby adopts the following Order.

Pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure and Regulation 103-804(S)(2), and in order to facilitate the prompt resolution of disputes over confidentiality, to adequately protect material entitled to be kept confidential, and to ensure that the protection is afforded to material so entitled, the Commission hereby orders that:

1. **Definition of Confidential Information.** The term “Confidential Information” refers to information in written, oral or other tangible or intangible forms which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer information, and other technical, financial or business information, designated as “Confidential Information” by a producing party if the party believes in good faith that the material is confidential or proprietary and is entitled to protection from disclosure under any provision of South Carolina or Federal law and the material is furnished pursuant to discovery requests, depositions, or otherwise produced during the

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Proceeding, as that term is defined below. “Confidential Information” shall not include information contained in the public files of any federal or state agency that is subject to disclosure under relevant South Carolina statutes nor shall it include information that, at the time it is provided through discovery or otherwise during the Proceeding or prior thereto, is or was public or that becomes public other than through disclosure in violation of this Order, nor shall “Confidential Information” include information found by the Commission or a court of competition jurisdiction not to merit the protection afforded Confidential Information under the terms of this Order.

2. **Definition of Proceeding.** The term “Proceeding,” for the purposes of this Protective Order, shall include: Docket No. 2016-79-C (Complaint and Petition for Relief of South Carolina Net, Inc. d/b/a Spirit Communications v. BellSouth Telecommunications, LLC d/b/a AT&T South Carolina) and any appeals thereof to a forum of competent jurisdiction.

3. **Designation of Material as “Confidential Information.”** Confidential written information shall be so indicated by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as “Confidential Subject to Protective Order in South Carolina Public Service Commission Docket No. 2016-79-C” or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection under this Order are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection. Confidential

non-written information shall be so indicated by asserting the confidentiality of such information at the time of disclosure.

4. **Permissible Disclosure of Confidential Information.** No Confidential Information may be used by the party to which it is disclosed in the Proceeding for purposes other than this Proceeding or be disclosed by the party to which it is disclosed in the Proceeding to any person except as provided in this paragraph.

(A) Confidential Information provided pursuant to this Protective Order may be disclosed without prior written consent to the following persons, but only in prosecuting the Proceeding, and only to the extent necessary to assist in prosecuting the Proceeding:

- (i) Counsel of record representing a party in the Proceeding and any legal support personnel (e.g., paralegals and clerical employees) acting at the direction of counsel.
- (ii) Other employees, officers, or directors of a party, or consultants or experts retained by a party, who are not engaged in strategic or competitive decision making, including, but not limited to, the sale or marketing or pricing of any products or services on behalf of the receiving party. Individuals who become reviewing representatives under this paragraph agree that they will not use the Confidential Information made available in the Proceeding to engage or consult in the development, planning, marketing, procurement, manufacturing, pricing or selling of telecommunication services, equipment software or other offerings, strategic or business planning, competitive assessment, and/or network planning, operations or procurement.

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- (iii) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.
- (iv) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in the Proceeding.

Persons obtaining access to Confidential Information under the provisions of this paragraph 4(A) shall not disclose information designated as Confidential Information to any person who is not authorized under this paragraph 4(A) to receive such information and shall not use the information in any activity or function other than in prosecuting the Proceeding. Each individual who is provided access to Confidential Information must receive a copy of this Order and sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Order and understands and agrees to be bound by the limitations it imposes on the signing party before being provided copies of any Confidential Information. The form of the notarized statement to be used is attached as Attachment A to the Protective Order.

- (B) Confidential Information may be disclosed to any other person only with the prior written consent of the party that designated the document or other non-written information as “Confidential Information” or upon Order of the Commission.

5. **Declassification.** A party may apply to the Commission for a ruling that documents, categories of documents, deposition transcripts or other non-written information, stamped or designated as Confidential Information, are not entitled to such status and protection.

The party or other person that designated the document or other non-written information as Confidential Information shall be given notice of the application and an opportunity to respond.

6. **Confidential Information Offered in Evidence or Filed in the Record.** Subject to paragraph 5, Confidential Information may be offered into evidence or in the record made by the parties, including through cross examination, and submitted to the Commission in the Proceeding provided that the submission is done in camera or under seal, as applicable.

7. **Subpoena by Courts or Other Agencies.** If a court or administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Order, such party shall promptly (within three (3) business days) notify the party (or other person who designated the document or non-written information as confidential) of the pendency of such subpoena or order to allow that party or other person time to object to that production or seek a protective order. A party that provides the notice required by this paragraph 7 is no longer subject to this Protective Order with regard to any Confidential Information that is the subject of any such subpoena or order.

8. **Client Consultation.** Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures in paragraph 4 above.

9. **Use.** Persons obtaining access to Confidential Information under this Protective Order shall use the information only for preparation of and the conduct of litigation in the Proceeding and any related appeals or review proceeding, and shall not use such information for

any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

10. **Non-Termination.** The obligations of the parties with respect to Confidential Information received pursuant to this Protective Order shall survive and continue after any expiration or termination of the Proceeding.

11. **Preservation of Rights.** Nothing in this Protective Order shall prevent any party from objecting to discovery or challenging the admissibility of any and all information and data that it believes to be otherwise improper.

12. **Responsibilities of the Parties.** The parties are responsible for employing reasonable measures to control, consistent with this Protective Order, duplication of, access to, and distribution of Confidential Information. A receiving party shall protect such Confidential Information by using the same degree of care (which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving party exercises in the protection of its own confidential information.

13. **Enforcement.** A party shall be entitled to seek enforcement of (or other appropriate relief, including sanctions, pertaining to) this Protective Order before the Commission, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Order. This Protective Order shall control the production and disclosure of all materials deemed “Confidential Information.”

14. This Order shall remain in full force and effect until further Order of the Commission.

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BY ORDER OF THE COMMISSION:

Nikiya Hall, Chairman

Swain E. Whitfield, Vice Chairman
(SEAL)